

## **MICROSOFT REGISTERED REFURBISHER PROGRAM AGREEMENT**

### **(Version 2.0)**

This agreement is between Refurbisher (as defined below) and Microsoft Licensing, GP (“MSLI”), a Nevada corporation, unless (i) Refurbisher is located in Europe, Africa, or the Middle East, in which case this agreement is between Refurbisher and Microsoft Ireland Operations Limited (“MIOL”), a company organized under the laws of Ireland, or (ii) Refurbisher is located in China, in which case this agreement is between Refurbisher and Microsoft (China) Company Limited (“MCCL”). MSLI, MIOL and MCCL, as applicable to Refurbisher, are each referred to as “MS” for purposes of this agreement. The terms “we,” “our” or “Microsoft” are used below to mean either MSLI, MIOL or MCCL, as appropriate.

### **1. DEFINITIONS**

- (a) **“APM”** means associated product materials MS designates as a part of the Product. Examples of APM include the End User manual and external media.
- (b) **“Authorized Distributor”** means a Distributor that has entered into a Microsoft OEM Distributor Channel Agreement with MS to distribute the Product in connection with the Program and which is identified on the MS OEM Distributor list at [www.microsoft.com/oem/authdist/default.mspx](http://www.microsoft.com/oem/authdist/default.mspx).
- (c) **“Citizenship Licenses”** means Software licensing rights available only to Eligible Recipients.
- (d) **“Citizenship Office Products”** means Software available only to Eligible Charitable Organizations and Specially Approved Recipients.
- (e) **“COA”** means a Certificate of Authenticity label.
- (f) **“Customer”** means an individual or legal entity that purchases a Refurbished PC.
- (g) **“Eligible Academic Users”** means
  - (1) Educational institutions that are:
    - (i) accredited academic institutions; or
    - (ii) vocational institutions; or
    - (iii) preschools that
      - (A) provide educational services to children;
      - (B) serve at least ten children; and
      - (C) have been in operation for at least one year.
  - (2) Administrative offices of an educational institution that are:
    - (i) district, regional, state, provincial or national administrative offices;
    - (ii) organized and operated exclusively for administration purposes; or
    - (iii) government groups whose activities primarily consist of providing administrative support for educational institutions.
  - (3) Public museums that:
    - (i) are organized primarily for educational or aesthetic purposes;
    - (ii) have a professional or volunteer staff; and
    - (iii) own or use real objects, care for them and show them to the public on a regular basis.

Eligible Academic Users are not eligible for Citizenship Office Products.

- (h) **"Eligible Charitable Organization"** means an organization that is eligible for the Microsoft Software Donation program. See <http://www.microsoft.com/About/CorporateCitizenship/CommunityInvestment/NGO/en/us/softwareGrants.msp> MS may make these requirements available in another place or different form. The requirements are subject to change from time to time at MS discretion.
- (i) **"Eligible Recipient"** means **(1) an Eligible Charitable Organization, (2) an Eligible Academic User, or (3) a Specially Approved Recipient.** The faculty, staff and students of any educational institution, home school program, hospital, healthcare system, and research laboratory are not included in the definition of an Eligible Recipient. However, this does not prohibit them from using Refurbished PCs as part of their role at an Eligible Recipient.
- (j) **"Eligible Refurbisher"** means an entity that refurbishes PCs for others, and is otherwise eligible to participate in the Registered Refurbisher Program. For "refurbishes" see the definition of "Refurbish."
- (k) **"EULA" or "License Terms"** means the end user license agreement between Refurbisher and end user, that is either part of the Software, or provided to Refurbisher as part of the Pack.
- (l) **"MS Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with MS, including Microsoft Corporation.
- (m) **"OEM"** means original equipment manufacturer.
- (n) **"Office Software"** means
- Microsoft Office XP Standard,
  - Microsoft Office Standard Edition 2003,
  - Microsoft Office Basic 2007, and
  - Microsoft Office Home & Student 2007.
- (o) **"OPK"** means the OEM preinstallation kit that includes, where applicable, installation instructions, utilities, tools, Software, and/or supplements delivered to Refurbisher by MS for installing the applicable Software on the Refurbished PC and assisting Refurbisher with the refurbishment process.
- (p) **"Other MS Software"** means Windows 2000 and Office Software.
- (q) **"Pack"** means the package of Microsoft OEM System Builder Software that contains Software eligible for distribution under this agreement. A Pack of Software includes any accompanying software media, documentation, COA, security devices and the end user license agreement.
- (r) **"PC"** means a personal computer.
- (s) **"Product" or "Software"** means the Windows Operating System Software, Other MS Software, MS Digital Literacy Curriculum Courses, and any other Microsoft software product licensed to Refurbisher under any addendum to this agreement as part of the Program. It includes any Program COA, APM and any Supplement. MS does not provide Product in source code form.
- (t) **"Product Key"** means a unique combination of numbers and letters that is used during Microsoft software installation to "unlock" or open the Software, in the format specified by Microsoft on the Program Web Site at <http://www.microsoft.com/registeredrefurb>.
- (u) **"Program"** means the Registered Refurbisher Program enabling refurbishers in the regions identified on the Program Web Site to install and activate the Software on Qualified PCs, as described in this agreement. Additional offerings included in the Program may be made available by addendum to this agreement for qualifying Refurbishers in specified geographic areas.

- (v) **“Program COA”** means the Certificate of Authenticity label designated by MS for use with the Software licensed under this Program.
- (w) **“Program Guide”** means the guide containing Program information located on the Program Web Site.
- (x) **“Program Web Site”** means the web site at <http://www.microsoft.com/registeredrefurb>
- (y) **“Qualified Individual”** means a person
- (1) In a community with limited access to technology; and
  - (2) With a disability; or
  - (3) A member of a low-income family. Examples of ways to identify low-income include those
    - (i) receiving state benefits based on need;
    - (ii) receiving aid from an Intergovernmental Organization (“IGO”);
    - (iii) in a country defined as a low-income economy by the World Bank.  
<http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>
- (z) **“Qualified PC”** means a PC that has been in distribution or used by an end user for at least 6 months, and to the best of Refurbisher’s knowledge contains the same motherboard as when the original Windows operating system software was installed. An original valid COA for a Windows operating system product must remain affixed to the PC. Refurbisher must use commercially reasonable efforts to determine whether a PC has been in distribution or used by an end user for at least 6 months.
- (aa) **“Refurbish”** means to restore a Qualified PC to a functional state where it is suitable for a new owner. Upgrading the PC does not include upgrading the central processing unit (CPU). Refurbisher may upgrade the random access memory (RAM) and the hard disk drive (HDD). Faulty motherboards must be replaced with a motherboard of the same specifications as the original. Reused hard drives on Qualified PCs must be reformatted in accordance with the Guidelines for Media Sanitization published in the National Institute of Standards and Technology Special Publication 800-88 or similar standard. Refurbisher may only refurbish a Qualified PC as part of the Program.
- (bb) **“Refurbisher”** means the entity entering into and accepting this agreement that refurbishes PCs for others, and is otherwise eligible to participate in the Program. For “refurbishes” see the definition of “Refurbish.” The online application form is located at the Program Web Site. A Refurbisher, depending on its country of establishment, may only have access to Citizenship licenses.
- (cc) **“Refurbished PC”** means a Qualified PC that has been Refurbished.
- (dd) **“Specially Approved Recipients”** means
- (1) Eligible recipients of a qualified Technology Access Program (TAP). A qualified TAP is a documented program that distributes Refurbished PCs to Qualified Individuals. It is run by one of the following:
    - (i) Eligible Charitable Organization,
    - (ii) Eligible Academic User,
    - (iii) national, state/provincial or local government agency; or
    - (iv) international governmental organization (IGO)

- (2) A teaching hospital or medical training school
- (3) A public research establishment fully funded by government on a local, national or European level; or
- (4) A national or regional governmental initiative, or such other initiative, as approved in writing by MS to be eligible under the Registered Refurbisher Program.
- (5) Public libraries that provide their services to all residents of a given community without charge. Some charges may apply for users outside a designated region or for other services.

**(ee) “Windows 2000 Operating System Software”** means the Windows 2000 operating system software.

**(ff) “Windows Operating System Software”** means:

- Windows XP Home Edition,
- Windows XP Home Edition N,
- Windows XP Home Edition K,
- Windows XP Home Edition KN,
- Windows XP Professional,
- Windows XP Professional N,
- Windows XP Professional K,
- Windows XP Professional KN,
- Windows XP Starter Edition,
- Windows 7 Starter,
- Windows 7 Home Premium,
- Windows 7 Home Premium N,
- Windows 7 Home Premium K,
- Windows 7 Home Premium KN,
- Windows 7 Professional,
- Windows 7 Professional N,
- Windows 7 Professional K, and
- Windows 7 Professional KN.

**(gg) “Windows XP Operating System Software”** means

- Windows XP Home Edition,
- Windows XP Home Edition N,
- Windows XP Home Edition K,
- Windows XP Home Edition KN,
- Windows XP Professional,
- Windows XP Professional N,
- Windows XP Professional K,
- Windows XP Professional KN, and
- Windows XP Starter Edition.

## **2. LICENSE**

**2.1 Grant.** If Refurbisher complies with the terms of this agreement, then Refurbisher has the following non-exclusive, limited rights:

- (a) use the OPK to install one copy of the Product software on each Qualified PC.
- (b) distribute the Product software preinstalled on the Qualified PC with the Program COA affixed.
- (c) distribute one unit of APM with each Product.

(d) for recovery purposes only, use the OPK to re-install one copy of the Product software that either Refurbisher or another refurbisher participating in the Program installed on a Qualified PC. Such reinstallation must be performed by using

(i) the Product Key obtained from the Program Web Site and

(ii) the COA serial number mentioned on the Program COA previously affixed to the Refurbished PC.

Refurbisher acknowledges that MS retains all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product and OPK. MS reserves all rights not expressly granted.

## **2.2 OPK Use Rights**

Refurbisher must use the OPK provided in the Pack or otherwise made available by MS and related tools only to preinstall the Product software. Refurbisher may use the information, tools and materials contained in the OPK solely to preinstall the Product software as provided in the OPK. Refurbisher may not make any changes to the Product unless expressly permitted in the OPK. Refurbisher may not use the OPK as a general operating system product or as a substitute for an operating system product. Refurbisher may not distribute the OPK to any customer or other third party.

**2.3 Ordering Software.** Refurbisher will order Software from an Authorized Distributor or such other entity as may be designated by MS from time to time. Refurbisher will pay to the Authorized Distributor the costs to acquire the Software.

## **2.4 Installation and Distribution**

(a) Refurbisher must complete the following steps prior to distribution of Software with Refurbished PCs

(1) confirm that supplied computers meet the definition of a "Qualified PC";

(2) Refurbish each Qualified PC;

(3) install the Product software on each Qualified PC;

(4) obtain a Product Key from the Program Web Site

(5) provide the Product Key with the Refurbished PC

(6) for Windows 7 Starter, Windows 7 Home Premium, Windows 7 Professional, Windows XP Home Edition and Windows XP Professional, configure the Refurbished PC (as described in the Registered Refurbisher Program Guide, which can be downloaded from the Program Web Site) to present to the Customer the Product EULA or License Terms on initial system boot-up; and

(7) for Windows XP Starter Edition, include one printed copy of the EULA with the Refurbished PC.

(b) Except as specifically authorized in this agreement or another license agreement with MS, Refurbisher shall not install, use, run, copy, modify, translate, display, distribute, sublicense, rent, loan, repackage or otherwise transfer any Software media (e.g. disk, CD), other MS software product, end user license agreements, COA(s) or documentation relating to the Software or other MS software products.

(c) Refurbisher must not reverse engineer, decompile, or disassemble the Product software or OPK, except to the extent expressly granted by this agreement or by applicable law notwithstanding this prohibition.

- (d) Refurbisher will not advertise, give a separate price for, or otherwise market or distribute the Software, OPK, or any portion thereof, as separate items from the Refurbished Customer System. However, Refurbisher may compensate end users for Software returned to Refurbisher under the EULA or License Terms.

## **2.5 Citizenship Licenses**

- (a) Refurbisher may distribute the Software associated with Citizenship Licenses only to Eligible Recipients.
- (b) Refurbisher may engage a third party to identify Eligible Recipients and to deliver Refurbished PCs to Eligible Recipients, provided that
- (1) Refurbisher must ensure that such third party complies with the applicable terms of this agreement;
  - (2) If Refurbisher becomes aware the third entity is not complying with these terms, the Refurbisher must immediately notify MS and must stop distributing Refurbished PCs to such third party; and
  - (3) Refurbisher acknowledges and agrees that it is liable to MS for the third party's actions and omissions.

**2.6 Installation of Windows Operating System Software.** Refurbisher may only install Windows Operating System Software in accordance with the following table. This section does not apply to Citizenship Licenses.

<b>Pre-existing COA</b>	<b>Windows XP Starter / Windows 7 Starter</b>	<b>Windows XP Home Edition / Windows 7 Home Premium</b>	<b>Windows XP Professional / Windows 7 Professional</b>
<b>No pre-existing COA</b>	Not Eligible	Not Eligible	Not Eligible
<b>Windows XP Starter Edition / Windows Vista Starter / Windows 7 Starter</b>	Yes	Not Eligible	Not Eligible
<b>Windows 95/ Windows 98/ Windows Millennium (Me) Edition Windows XP Home Edition/Windows Vista Home Basic/Windows Vista Home Premium/Windows 7 Home Premium</b>	Yes	Yes	Not Eligible
<b>Windows 2000/Windows XP Professional/Windows Vista Business/Windows Vista Ultimate/Windows 7 Professional/Windows 7 Ultimate</b>	Yes	Yes	Yes

**2.7 End of License - Windows XP Operating System Software.** The Windows XP Operating System Software Products will not be available from an Authorized Distributor after December 31, 2011. Refurbisher may continue to distribute the Windows XP Operating System Software Products that are in its inventory on December 31, 2011, until the earlier of the end of this agreement or termination of Refurbisher's right to distribute Windows XP Operating System Software Products.

## 2.8 **Excluded License**

- (a) “Excluded License” means any license that requires as a condition of use, modification or distribution of Software subject to that license, that the Software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.
- (b) License rights to any Software (or MS Affiliate intellectual property) do not include any license, right, power or authority to subject the Software or derivative works in whole or in part to any of the terms of an Excluded License.
- (c) Subject to this agreement, Refurbisher may distribute the Software with
  - (1) any software that is not subject to an Excluded License;
  - (2) software that is subject to an Excluded License, if distributed in a manner that does not subject, or purport to subject, the Software (or any MS or MS Affiliate intellectual property related to the Software) to the terms of an Excluded License.

## 2.9 **COAs, Product Keys and Activation**

### (a) **Pre-existing and Program COAs**

- (1) **Windows Operating System Software.** Each Refurbished PC must have a pre-existing COA for a Microsoft Windows operating system product affixed to it, which must remain on the Refurbished PC. In addition, Refurbisher must permanently affix a new Program COA for the Windows Operating System Software that is preinstalled on the Refurbished PC. The Program COA must be visible on the exterior of the Refurbished PC. Refurbisher may, at its option, either mark through or place a sticker of its own design and manufacture over the product key on the pre-existing COA. Refurbisher must not remove or obscure the serial number on the pre-existing COA.
- (2) **Office Software**
  - (i) For Citizenship Licenses, Refurbisher must affix the Program COA to the reverse of the Product Key PDF document that Refurbisher obtains from the Program Web Site.
  - (ii) For all licenses except Citizenship Licenses, Refurbisher must affix the Program COA to the Office Software recovery media.
- (3) **MS Digital Literacy Curriculum Software.** No COA is provided; Refurbisher does not affix a Program COA for this Software.

### (b) **Product Keys.** Refurbisher will be provided Program credentials required to obtain Product Keys to enable activation of Refurbished PCs. Refurbisher must provide the following to MS in order to obtain a Product Key:

- (1) valid Program user name, password and any other required Program credentials;
- (2) the serial number or COA ID on the Refurbished PC’s pre-existing COA, if applicable; and
- (3) the serial number or COA ID on the Program COA.

Refurbisher must have connection to the internet in order to obtain Product Keys. Whether Refurbisher is using Program COAs that include Product Keys or obtaining the Product Keys separate from the Program COAs, Refurbisher must also report the following for Citizenship COAs:

- (1) full name of the entity that will be purchasing the Refurbished PC from Refurbisher (“Purchasing Entity”);

- (2) city and country of location of the Purchasing Entity;
- (3) Type of Purchasing Entity (Eligible Academic User, Eligible Charitable Organisation, or Specially Approved Recipient);
- (c) **Product Key to accompany the Refurbished PC.** The Product Key for each Refurbished PC must be provided with the Refurbished PC in the form of a printed document. The document will be generated by the Program Web Site and include the Product Key and Program COA serial numbers.
- (d) **Activation.** Either Refurbisher or the end user must use the Product Key to activate the Refurbished PC.
- (e) **Recovery.** Refurbisher may create a recovery partition on the hard drive of a Refurbished PC and install a recovery image for the Windows Operating System Software it preinstalled on that Refurbished PC. If Refurbisher chooses not to provide a recovery image on a Refurbished PC, the customer will be able to recover the customer's installation only from Refurbisher or another refurbisher participating in the Program as provided in Section 2.1(c) above.
- (f) **Windows XP Starter Edition EULA.** Each Refurbished PC preinstalled with Windows XP Starter Edition must be distributed with the hard copy EULA provided in the Windows XP Starter Edition Pack to Refurbisher. Refurbisher must not modify or change the EULA in any way from the version provided in the Pack. The hard copy EULA, by its terms, supersede any EULA or end user license terms that are included in the Windows Operating System Software product preinstalled on the Refurbished PC.

### 3. REFURBISHER COMMITMENTS AND ACKNOWLEDGEMENTS

#### 3.1 Audit Rights

- (a) MS or a designated third-party may periodically audit Refurbisher's facilities, records and books to verify compliance with this agreement. MS may request an audit at anytime during the term of this agreement, and for a period of one year after the end of this agreement. The audit may include a review of the process to verify PCs match the definition of a Qualified PC and the Refurbishment process defined in this agreement. The audit will take place during regular business hours. Refurbisher must make reasonable efforts to make all records available at one convenient location. Auditors will take reasonable measures not to interfere with Refurbisher's normal course of business.
- (b) MS will pay the costs associated with the audit. However, if the audit reveals a material breach of the Refurbisher obligations in this agreement, Refurbisher agrees to pay all costs associated with the audit and to become compliant per the terms of this agreement or MS may choose to terminate this agreement according to the "Termination" section.

**3.2 Compliance with Law.** Refurbisher agrees to comply with all local, state, national and international laws and regulations that apply to the Software or Refurbisher's performance under this agreement. Refurbishers that refurbish and resell an average of 5,000 Refurbished PCs per month are required to publish and maintain an environmental compliance statement on their web site. They also agree to have end-of-life management practices that meet or exceed any guidelines, policies or code of conduct that is published by the government of the country in which it is headquartered.

**3.3 Quality.** Refurbisher commits that the quality of each of Refurbisher's Refurbished PCs must meet or exceed standards or quality and performance generally accepted in the industry.



- 3.4 Inactive Status.** Refurbisher may be considered inactive if it has not requested Product Keys under the terms of this agreement for a certain period of time as described on the Program Web Site.
- 3.5 COA and Password Management.** Refurbisher shall take all steps to prevent unauthorized distribution, duplication or pirating of the Software, OPK and Program COA(s). Refurbisher shall not make the Program COA(s) available through any other means or channels. Refurbisher shall keep all Program COA(s) in a secure location. In addition, Refurbisher must protect and manage its user name(s) and password(s) used for the Program in a secure manner to prevent unauthorized access and use.
- 3.6 Support.** MS will not provide technical support services for the Software to the Refurbisher or the Refurbisher's customer(s).
- 3.7 Refurbisher Representations and Warranties.** Refurbisher represents and warrants to MS that
- (a) it is an Eligible Refurbisher;
  - (b) it has access to the World Wide Web; and
  - (c) information on interoperability of the Software with other products is readily available.
- 3.8 Refurbisher Acknowledgements.** Refurbisher shall not earn or have a right to receive any royalties in connection with this agreement. MS does not allow unauthorized duplication and distribution of the Software, OPK or any COA.

#### **4. TERM AND TERMINATION**

- 4.1 Term.** This agreement is effective from the date MS accepts it, as indicated in an email communication from MS to Refurbisher ("Effective Date") through September 30, 2012, unless terminated earlier by either party in accordance with this agreement.
- 4.2 Termination**
- (a) **Default.** Either party (the "non-defaulting party") may terminate this agreement immediately if the other party (the "defaulting party")
    - (1) materially fails to perform or comply with any provision of this agreement;
    - (2) materially fails to comply with any surviving obligation under a previous agreement; or
    - (3) becomes insolvent, enters bankruptcy or similar proceedings under applicable law, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors.
  - (b) **Termination.** Termination will be effective
    - (1) 30 days after written notice (including reasons for termination) by the non-defaulting party, provided the defaults have not been cured within that period;
    - (2) without limiting or waiving any rights or remedies that are available in law or equity, either party may terminate this agreement immediately, without prior written notice, in the event of a material breach of the provisions under Section 5 - Nondisclosure of this agreement or infringement of the party's intellectual property rights; or
    - (3) upon notice by the non-defaulting party if the defaulting party has previously received two or more notices of Default under this agreement.
  - (c) **Refurbisher Responsibility.** Refurbisher must return unused COA and Software as specified by Microsoft upon termination or expiration of this agreement. There are no refunds for returned items.

(d) **Survival.** Sections 3 through 9 will survive the termination or expiration of this agreement.

## **5. NONDISCLOSURE**

(a) **"Confidential Information"** means MS's confidential and proprietary information, and any other non-public information which is designated as confidential by MS or which should reasonably be considered confidential.

(b) Refurbisher agrees:

- (1) to refrain from disclosing or distributing the Confidential Information to any third party for five years from the date of disclosure of the Confidential Information by MS to Refurbisher;
- (2) refrain from reproducing or summarizing the Confidential Information;
- (3) to take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information; and
- (4) Refurbisher, however, may disclose Confidential Information in accordance with a judicial or other governmental order, provided Refurbisher either (A) gives MS reasonable notice prior to such disclosure and to allow MS a reasonable opportunity to seek a protective order or equivalent, or (B) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation.

(c) Confidential Information does not include any information, however designated, that:

- (1) is or subsequently becomes publicly available without Refurbisher's breach of any obligation owed to MS;
- (2) became known to Refurbisher prior to MS's disclosure of such information to Refurbisher pursuant to the terms of this agreement;
- (3) became known to Refurbisher from a source other than MS other than by the breach of an obligation of confidentiality owed to MS; or
- (4) is independently developed by Refurbisher.

## **6. NO WARRANTIES AND DISCLAIMER OF DAMAGES**

**No Warranty.** MS provides no warranties, conditions or guarantees under this agreement. Refurbisher shall provide Software to Customers on an **"As-Is"** basis. To the extent permitted by applicable law, MS excludes the implied warranties or conditions of merchantability, fitness for a particular purpose and non-infringement.

**Damage Disclaimer.** Refurbisher releases MS from all liability, including, any claim for indemnification or contribution. MS shall not be liable under this agreement for any economic damages including:

- loss of profits or revenues;
- business interruption; and
- loss of business information or data.

MS shall not be liable under this agreement for any consequential, special, incidental, indirect, or punitive damages. Liability is disclaimed even if MS has been advised of the possibility of the damages. The exclusion of liability applies in the event of fault, tort (including negligence), misrepresentation, strict or product liability.

Refurbisher acknowledges that all exclusions of liability and any subsequent damages shall apply even if any remedies fail of their essential purpose. If MS contributes to the loss or damage of the Refurbisher, which by law cannot be excluded by this agreement, the loss or damage shall be limited to Refurbisher's direct damages as a result of a reasonable reliance upon MS. These direct damages are limited to the amount paid by the Refurbisher under this agreement.

## **7. INDEMNIFICATION**

Refurbisher will indemnify and defend, at its expense, MS against any Refurbisher Claim. "Refurbisher Claim" means any third-party claim or allegation against MS related to:

- refurbishment of Qualified PCs;
- distribution of Refurbished PCs;
- breach or alleged breach of this agreement by Refurbisher;
- negligent act or omission by Refurbisher under this agreement; or
- claims or allegations resulting from action of Refurbisher affiliates, agents or subcontractors.

If there is an adverse final judgment (or settlement to which Refurbisher consents) resulting from any Refurbisher Claim, Refurbisher will pay it for MS. MS will promptly notify Refurbisher of the Refurbisher Claim, describing the claim and the relief that the third party seeks. MS will give Refurbisher reasonable assistance in defending the Refurbisher Claim. Refurbisher must have MS written consent before settling any Refurbisher Claim. MS will not unreasonably withhold its consent.

This indemnity will survive termination or expiration of this agreement.

## **8. LAWS, COURTS AND JURISDICTION**

### **8.1 Choice of Law; Jurisdiction and Venue**

- (a) **MSLI and MCCL**. If MS is defined as MSLI and MCCL, Washington State law governs this agreement and any claims for breach of them, regardless of conflict of laws principles. The federal courts in Washington State or New York State are the exclusive venues for all disputes arising from this agreement. The state courts of Washington State are the exclusive venue if there is no federal subject matter jurisdiction. Each party consents to the exercise of personal jurisdiction by these courts. Each party agrees that it cannot revoke this consent.
- (b) **MIOL**. If MS is defined as MIOL, the laws of Ireland govern this agreement and any claims for breach of it, regardless of conflict of laws principles. The courts of Ireland are the exclusive venues for all disputes arising from this agreement. Each party consents to the exercise of personal jurisdiction by these courts. Refurbisher agrees that, for the benefit of MS and MS Affiliates, the courts of Ireland will have jurisdiction to hear and determine any suit, action, or proceedings that may arise out of or in connection with this agreement. For those purposes, Refurbisher submits to the jurisdiction of those courts. Each party agrees that it cannot revoke this consent.

**8.2 Injunctive Relief**. MS may pursue injunctive relief against Refurbisher in any forum for a breach of confidentiality obligations, to protect intellectual property rights, or to enforce any award or order. If MS pursues injunctive relief in a forum other than the defined Jurisdiction, MS will give prior notice to Refurbisher. No notice is required if MS reasonably determines that doing so will prevent it from reasonably protecting its intellectual property.

**8.3 UN Convention**. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this agreement.

**8.4 Attorneys Fees.** If either party employs attorneys to enforce any rights related to this agreement, the primarily prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses.

#### **8.5 Governmental Regulation**

**(a) Applicable Laws and Regulations.** The Software and their OPKs are subject to U.S. and European Union export jurisdiction. Releases or versions of certain Software and their OPKs may be subject to particular restrictions under the laws and regulations of a certain country or territory. Refurbisher must comply with all international and national laws and regulations that apply to the Software. These laws include

- (1)** U.S. Export Administration Regulations,
- (2)** all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act; and
- (3)** importation, manufacturing, end user, end-use and destination restrictions issued by U.S. and other governments.

For additional information on exporting Software from the U.S., see <http://www.microsoft.com/exporting/>.

**(b) Government Approvals.** Refurbisher must obtain any required local government approvals, at their own expense.

**(c) Additional Information.** Refurbisher may require additional information about the Software in order to comply with applicable laws and regulations. Upon request, MS will provide Refurbisher with non-confidential Software information that Refurbisher reasonably requires, if available.

### **9. General Terms**

**9.1 Entire Agreement.** This agreement and the attachments, any addendum licensing additional Microsoft products to Refurbisher, and other documents made part of this agreement by their terms, constitute the entire agreement between the parties. This agreement may be modified only by a writing executed by each of the parties.

**9.2 Relationship of the Parties.** The parties agree that this agreement will not be construed as creating a partnership, joint venture, agency relationship or as grant a franchise.

**9.3 No Waiver.** No waiver of any breach of any part of this agreement will be a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

**9.4 Severability.** If a court of competent jurisdiction finds any term of this agreement illegal, invalid, or unenforceable, the remaining terms will remain in full force and effect.

**9.5 Assignment.** Refurbisher may not assign this agreement in whole or in part (by contract, merger, operation of law, or otherwise). Any assignment in violation of this provision will have no effect.

**9.6 Interpretation.** The headings and titles of the provisions of this agreement are for convenience only and do not affect the interpretation of any provision.

**9.7 Limited Distribution.** Distribution and use of the Software is by license only. Microsoft does not authorize any portion of the Software to be "issued to the public," "put into circulation," or subject to a "first sale" as the copyright laws may use those (or similar) terms.

**9.8 Non-Exclusivity.** Nothing in this agreement restricts Refurbisher from supporting, promoting, distributing or using non-Microsoft software or hardware.

**9.9 Force Majeure.** “Force Majeure Event” means fire, casualty, or an act caused exclusively by forces of nature, riot, terrorist act, war, labour dispute, material changes in applicable law or regulation, or decree of any court. Force Majeure does not include theft. Neither party will be liable for failing to perform under this agreement to the extent that a Force Majeure Event caused the failure. The party subject to the Force Majeure Event must give the other party notice within a commercially reasonable time. As soon as the Force Majeure Event stops, the party must perform the obligations that were not performed. In no event shall the damage to, or destruction or disappearance of, COA label(s) on account of a Force Majeure Event relieve Refurbisher of its payment obligations in connection therewith.

**9.10 Limitation of Liability.** The total cumulative liability (if any) of MS, and Refurbisher's exclusive remedy for that liability, shall be limited to Refurbisher's direct damages incurred in reasonable reliance upon MS up to an amount not to exceed 100% of the amount having actually been paid by Refurbisher to MS during the three-month period preceding such damages under this agreement. MS disclaims liability for all lost profits, indirect, consequential, incidental, economic, special and punitive damages.

The limitations in this section apply to

- the Software and claims of breach of contract;
- breach of warranty or condition;
- strict liability; or
- negligence or other tort claims.

The limitations also apply even if Refurbisher is not fully paid for any losses, or MS knew or should have known about the possibility of damages. Refurbisher also releases MS from all liability in excess of the limits in this section. This release includes any claim for indemnification or contribution even if such claims arise under local law.

**9.11 Taxes and Other Charges Excluded.** Refurbisher is responsible for any taxes, duties, fees, excises or tariffs imposed on any of its activities in connection with this agreement. Refurbisher must pay these charges, taxes and other fees.

**9.12 Anti-Piracy.** Refurbisher must not engage in the distribution of counterfeit or pirated Software. If Refurbisher suspects any infringement of Microsoft intellectual property, it must report it to Microsoft as soon as possible. Refurbisher must also cooperate with the investigation.

**9.13 Technology Transfer.** This agreement does not create a “technology transfer” agreement, as defined by applicable law because

- (a) the technology here is not an integrated part of a technology chain for production or management purposes; and
- (b) the technology will have its own license.

Refurbisher will not hold themselves out as MS technology recipients. Refurbisher will not attempt to identify MS as a technology provider under this agreement.

**9.14 Notices**

- (a) Unless otherwise stated in this agreement, all notices from Refurbisher must be in writing on Refurbisher letterhead, and signed by an authorized representative of Refurbisher (“ Refurbisher Written Notice”). All notices to MS must be provided to the fax number or email address listed on the Program Web Site for the applicable MS entity.

- (b) MS must address all notices, authorizations, and requests related to this agreement to the contact address (including physical and email address) for legal communications, as provided by Refurbisher as part of Program registration on the Program Web Site. This contact information can only be changed as provided on the Program Web Site.
- (c) Notices will be deemed received seven days after any of the following occur.
- (1) For a notice address in the U.S.A.: When the notice is deposited in the U.S.A. mails, postage prepaid, certified or registered, return receipt requested.
  - (2) For a notice address in a member country of the European Union ("EU") or European Free Trade Association ("EFTA"): When the notice is deposited in the EU or EFTA mails, prepaid recorded delivery.
  - (3) When the notice is sent by air express courier, charges prepaid.
  - (4) If the notice is by MS regarding updates or changes to MS information, instructions, or forms: Seven days after notice is sent via email or posted on the Program Web Site.
  - (5) For fax or email notices sent by Refurbisher: Seven days after notice is sent via fax or email.

#### **10. Signature**

To sign the agreement, Refurbisher shall click the "Accept Agreement and Continue" button, complete the Refurbisher application form including online signature and click "Submit and Review." **By signing, Refurbisher evidences its intent to be legally bound by all terms.** If Refurbisher does not wish to sign, click on "Cancel."